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COMMISSION ON HUMAN RIGHTS
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Agenda items 10 and 11

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES

QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

Written statement submitted by the International Federation of Human Rights, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[23 July 1992]

1. The International Federation of Human Rights (IFHR) and its United Kingdom affiliate in Northern Ireland, the Committee on the Administration of Justice (CAJ), are concerned about the absence of safeguards to prevent ill-treatment of detainees held under emergency legislation in Northern Ireland and constraints placed on their access to legal advice. Furthermore, we are concerned about the ongoing intimidation of lawyers in Northern Ireland by elements within the police force. The United Nations

Basic Principles on the Role of Lawyers (supported in General Assembly resolutions 45/121 of 14 December 1990 and 45/166 of 18 December 1990) and other international instruments set certain minimum standards, which in our view are being breached in Northern Ireland.

2. Since the early 1970s IFHR and other international non-governmental organizations have collected allegations of ill-treatment of detainees in Northern Ireland. In 1978 the European Court of Human Rights found in the case of Ireland v United Kingdom that the United Kingdom was subjecting detainees to inhuman and degrading treatment in Northern Ireland. More recently, in November 1991, the United Nations Committee Against Torture looked at renewed allegations of ill-treatment and expressed concern about the regime governing the detention of people held under emergency legislation in Northern Ireland.

3. Under this regime detainees can be held for up to seven days without being brought before a court. In 1988, in the case of Brogan v United Kingdom, the European Court of Human Rights found the seven day power to be in breach of article 5 (3) of the European Convention on Human Rights. The United Kingdom subsequently issued notices of derogation from the European Convention and the International Covenant on Civil and Political Rights.

4. There is no independent scrutiny of police interrogations during the prolonged period that detainees can spend in custody before being produced before a court. The Government has announced its intention to appoint an independent commissioner to visit the holding centres but no details of his or her powers are available as yet. The interrogations are not video or audio recorded.

5. Under Section 45 of the Northern Ireland (Emergency Provisions) Act 1991 detainees are frequently denied access to their lawyers for up to the first 48 hours of detention and for intervals of up to 48 hours thereafter. There is no right for detainees to consult their lawyers in private. In the view of IFHR and CAJ, this is in direct contravention of paragraph 8 of the Basic Principles on the Role of Lawyers which provides: "All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials". Furthermore, lawyers are not allowed to be present during interrogations, a right afforded to people arrested under the same terrorism provisions in Great Britain and under the ordinary criminal law throughout the United Kingdom. Lay visitors who can visit detainees under the ordinary criminal law are not allowed access to the special holding centres where terrorist suspects are detained.

6. At present official policy stipulates that a police officer not involved in the interrogation should observe the interview via a silent, non-recorded television monitor. It has emerged that these monitors have not always been watched and that no disciplinary proceedings or criminal prosecutions of police officers have arisen from their use. In fact not one single complaint made by detainees in the last four years about ill-treatment during detention

in the holding centres has resulted in disciplinary action against a police officer. Complaints against the police are investigated by the police. In spite of the failure to discipline police officers the Government of the United Kingdom has paid large sums of money each year to settle claims for alleged ill-treatment of detainees by police officers.

7. The right to remain silent under questioning or at trial has been abrogated in Northern Ireland and thus undermines detainees' prerogative against self-incrimination. Furthermore, the standards governing the admissibility of confession evidence have been lowered to make it easier to admit such evidence under emergency legislation. IFHR and CAJ fear that the overall thrust of these changes has been to tend to force the detainee to incriminate him or herself contrary to article 14 (3) (g) of the International Covenant on Civil and Political Rights.

8. Detainees regularly report that police officers make threats against the lives of their lawyers, question their lawyers' professionalism and suggest that their lawyers are in the pay of or are members of terrorist groupings. Many of these alleged threats contain references to the murder in February 1989 of a Belfast solicitor, Mr. Patrick Finucane, who represented many detainees accused of terrorist offences. An international mission of lawyers, supported by IFHR, investigated the circumstances surrounding Mr. Finucane's murder which was claimed by "loyalist" paramilitaries.

9. One year before Mr. Finucane's death one of his clients, Mr. Brian Gillen, reported in a statement about ill-treatment during police detention that police told him that his lawyer would be killed. This was one of many such threats made against him before his death.

10. According to information collected by IFHR and CAJ, Mr. Finucane's death and the current threats against lawyers occur against a background of collusion between members of the security forces and loyalist paramilitaries. This collusion involves either the passing of security information or more active participation in illegal activities. Such has been the concern about this matter that an inquiry into the question of collusion was instituted by the police in September 1989.

11. This inquiry was completed in May 1990 by Mr. Stevens, Deputy Chief Constable of Cambridgeshire in England, and resulted in a large number of arrests although it failed to satisfy public concern as it concluded that "leakages of information may never be completely eliminated". One of those arrested as a result of the Stevens Inquiry was Mr. Brian Nelson. At his trial it emerged that he was working as a double agent for army intelligence and had infiltrated a loyalist paramilitary organization. According to recent information, made public in a television documentary of the British Broadcasting Corporation (BBC), Mr. Nelson and his security service supervisors knew Mr. Finucane was being targeted for assassination.

12. Three weeks before Mr. Finucane's death a Government minister, Mr. Douglas Hogg, stated during a Parliamentary Committee discussion that "a number of solicitors" in Northern Ireland were "unduly sympathetic to the Irish Republican Army". Despite being challenged Mr. Hogg refused to withdraw

his comments and went on to repeat the allegation using the same formula of words. His refusal came after a Member of Parliament from Northern Ireland warned that his comments could lead to the death of solicitors there.

13. As yet no one has been prosecuted for the murder of Mr. Finucane. It was revealed at the inquest into his death that he was killed by an army firearm stolen by a member of the British army and sold to a loyalist paramilitary group.

14. The Government has not provided any information on its investigation into the allegations of official collusion in Mr. Finucane's death. Mr. Finucane's death and the ongoing allegations from detainees that police officers are making theats against their lawyers has had a considerable effect on the situation of lawyers in Northern Ireland. In a recent BBC television programme made by CAJ, a lawyer said that the murder of Patrick Finucane had made lawyers realize that they "weren't immune from the violence ... and I think that fear's still there ...". Also in this programme a woman claimed that during her detention police told her that her lawyer would end up the same way as Patrick Finucane.

15. IFHR and CAJ believe that these practices comply with neither the letter nor the spirit of paragraphs 16, 17 and 18 of the United Nations Basic Principles on the Role of Lawyers which say:

> "16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference...
>
> 17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.
>
> 18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions."

In order to address these matters and to ensure that the Government of the United Kingdom complies with international human rights standards, IFHR and CAJ renew their proposal of a number of measures which would safeguard the rights of detainees and the position of lawyers:

- Immediate access for lawyers to their clients as soon as they are detained;
- The right for lawyers to be present during interrogations of their clients;
- The video and audio recording of all police interviews;
- The restoration of the right to remain silent;
- The issuing of threats or abuse against lawyers to be made a specific criminal and disciplinary offence;

- All interviews between lawyers and their clients to be conducted in private;

- The creation of an independent system to investigate complaints against the police;

- The establishment of an independent public inquiry into the circumstances surrounding the death of Patrick Finucane.

16. Furthermore, we respectfully request that the Sub-Commission urge the Government of the United Kingdom to ensure that its laws and the actions of its security forces in Northern Ireland fully comply with the United Nations Basic Principles on the Role of Lawyers.